

# **TRIBAL-STATE COMPACT FOR CLASS III GAMING**

**Between the**

**Makah Indian Tribe**

**and the**

**State of Washington**

**MAKAH INDIAN TRIBE  
AND THE  
STATE OF WASHINGTON  
CLASS III GAMING COMPACT**

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**MAKAH INDIAN TRIBE  
AND THE  
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CLASS III GAMING COMPACT**

**INTRODUCTION**

THIS COMPACT is entered into pursuant to the Indian Gaming Regulatory Act of 1988, Pub.L. 100-497, codified at 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168 (hereafter "IGRA" or "Act").

**PARTIES**

THIS TRIBAL-STATE COMPACT is made and entered into by and between the Makah Indian Tribe (hereafter "Tribe"), federally-recognized as an Indian Tribe, possessed of all sovereign powers and rights thereto pertaining; and the STATE OF WASHINGTON (hereafter "State"), as a sovereign state of the United States, with all rights and powers thereto pertaining.

**DECLARATION OF POLICY AND PURPOSE**

IGRA provides for the negotiation of compacts between States and Tribes to govern the conduct of Class III gaming. Indian tribes have rights under IGRA to regulate gaming activities on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a state which does not, as a matter of criminal law and public policy, prohibit such gaming activity. The overarching policy of the Act is to provide a framework for the operation of gaming by Indian tribes as a means of promoting Tribal economic development, self-sufficiency and strong Tribal governments, as well as providing a basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation and to assure that gaming is conducted fairly and honestly by both the operator and players.

The Tribe does not desire to conduct any type of Class III gaming activities on its Tribal lands. However, the Tribe intends to transfer its allocation of Tribal Lottery System Player Terminals to other Tribes, as provided in Appendix X to this compact. Therefore, it is the stated intention of the parties hereto to foster full cooperation between the Tribe and the State on the basis of a shared concern for the welfare and protection of all the members of the Tribe and citizens of the State as a result of the Tribe's entitlement to said Allocation. Through the partnership of this Compact, the parties desire to further the purposes of IGRA for the benefit of the Tribe and the protection of the State, by creating a cooperative means through which the Tribe may lawfully be entitled to its Allocation. To that end, this Compact defines the manner in which laws regulating the gaming activities are to be applied, in order that the respective Tribal and State interests may be met.

The Tribe and the State have mutually agreed, within the parameters established by the Act, to the following provisions governing the Allocation, which are designed to (a) protect the health, welfare and safety of the citizens of the Tribe and the State, (b) develop and implement a means of regulating the Allocation, and (c) maintain the integrity of Tribal Lottery System gaming activities within the State.

The policy of the State, as set forth in Chapter 9.46 RCW, is to allow limited and highly regulated casino gaming, and to restrain persons from seeking profit from illegal gambling activities. The provisions of Chapter 9.46 RCW and Title 230 WAC regulate gambling activities in Washington State. The State agrees that the Tribe is authorized, as a result of the provisions of IGRA and the terms of this Compact, to an allocation of Tribal Lottery System machines as expressly permitted herein.

The Tribe and the State believe that the Tribe's Allocation under the terms and conditions set forth below will, from a regulatory perspective, benefit the Tribe and the State and protect the members of the Tribe and the citizens of the State consistent with the objectives of IGRA.

NOW, THEREFORE, in consideration of the foregoing and the mutual benefits to be derived, the Tribe and State do enter into this Compact as provided for herein.

## **I - TITLE**

This document shall be cited as "The Makah Indian Tribe - State of Washington Gaming Compact."

## **II - DEFINITIONS**

For purposes of this Compact:

- A. "Act" or "IGRA" means the Indian Gaming Regulatory Act, Pub.L. 100-497, 25 U.S.C. §§ 2701 et seq. and 18 U.S.C. §§ 1166 et seq. and all regulations issued thereunder (also IGRA).
- B. "Allocation" means the number of Tribal Lottery System player terminals the Tribe is entitled to pursuant to Appendix X hereto.
- C. "Chairman" means the Chair of the Makah Indian Tribe, elected by the tribal members.
- D. "Compact" means this Compact.
- E. "Governor" means the Governor of Washington State.
- F. "RCW" means the Revised Code of Washington, as amended.
- G. "State" means the State of Washington, its authorized officials, agents and representatives.
- H. "State Gaming Agency" or "SGA" means the Washington State Gambling Commission.
- I. "Makah Indian Reservation" or "Tribal Lands" means Indian lands as defined by 25 USC §2703(4)(A) and (B), subject to the provisions of 25 USC §2719.

- J. "Tribal Lottery System" means any lottery system operated pursuant to Appendix X hereto.
- K. "Tribe" means the Makah Indian Tribe, represented by its elected officials.
- L. "WAC" means the Washington Administrative Code, as amended.

### **III – ACCESS TO RECORDS**

The State Gaming Agency shall have authority to review and copy all records maintained by the Tribe related to this Compact, provided that any copy thereof and information derived therefrom, from the SGA's review, shall be deemed strictly confidential and/or proprietary information, or financial information, of the Tribe. The State Gaming Agency shall notify the Tribe, by certified mail, of any requests for disclosure of such information and shall not disclose any such information until the Tribe, the State, or both have had a reasonable opportunity to challenge the request, pursuant to RCW 42.17.330. Provided, this public disclosure prohibition shall not apply to evidence used in any proceeding authorized by this Compact.

### **IV – JURISDICTIONAL ISSUES**

Except as expressly set forth herein, and then only to the extent expressly set forth herein, the terms of this Compact do not constitute a waiver of sovereign immunity by either party and any such waiver is and shall be deemed to be only a limited waiver solely for the purposes set forth in this Compact. Nothing in this Compact is intended to create any State or other non-Tribal entity jurisdiction with respect to non-gaming related activities on the Makah Indian Reservation. The terms of such limited waiver of sovereign immunity shall be strictly construed.

### **V - ENACTMENT OF COMPACT PROVISIONS**

State Gaming Agency Rules or Regulations. Pursuant to its general rule making authority contained in Chapter 9.46 RCW, the State Gaming Agency may enact as part of its rules or regulations governing gambling, all or part of the provisions of this Compact.

### **VI - REMEDIES FOR BREACH OF COMPACT PROVISIONS**

- A. Injunction Against the State. If the Tribe believes the State, whether or not through the State Gaming Agency, is in breach or default or is otherwise acting contrary to, or failing to act in the manner required by, any of the provisions of this Compact, the Tribe may seek injunctive or other relief in a court of competent jurisdiction. Prior to bringing such action, the Tribe shall notify the State and the State Gaming Agency in writing of the alleged violation(s).

- B. Injunction Against the Tribe. The State Gaming Agency may bring an action to enjoin the Tribe, if the State determines that the Tribe has violated the provisions of this Compact. Such action shall be brought in the U.S. District Court for the Western District of Washington, pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii). Solely for the purpose of this remedy, the Tribe consents to such suit and hereby agrees to a limited waiver of sovereign immunity for the purposes set forth in this sub-section only, such waiver to be effective only during the term that this Compact is in effect; provided, that no injunctive relief shall be sought against the Tribe without notice, and if the State seeks injunctive relief against the Tribe without first having resorted to the dispute resolution procedures in Section VII of this Compact, the State shall have the burden of demonstrating to the Court that the failure to resort to said procedures was reasonably justified. Prior to bringing such action, the State Gaming Agency shall notify the Tribe in writing of the alleged violation(s).

## **VII – DISPUTE RESOLUTION**

In recognition of the government-to-government relationship of the Tribe and State, the parties shall make their best efforts to resolve disputes by good faith negotiations whenever possible. Therefore, without prejudice to the right of either party to seek injunctive relief against the other, when circumstances require such immediate relief, the parties hereby establish a method of non-judicial dispute resolution in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions and conditions of this Compact. Unless other procedures and time frames are elsewhere set forth in this Compact, then and in the event of a dispute or disagreement between the parties regarding the implementation and compliance with referenced provisions of this Compact or otherwise by mutual agreement of the parties, disputes shall be resolved as follows:

1. Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth the issues to be resolved;
2. The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than ten (10) days from receipt of the notice;
3. If the dispute is not resolved to the satisfaction of either party within twenty (20) days of the first meeting, then either party may seek and cause to have the dispute resolved by and in accordance with the policies and procedures of the Commercial Rules of Arbitration of the American Arbitration Association, unless the parties agree to use a different service, at sites which alternate between the Makah Indian Reservation and the State Gaming Agency or Commission offices after each arbitration dispute, i.e., the first arbitration dispute, until completed, shall be held on the Makah Indian Reservation; the next arbitration dispute, until completed, shall be held at the State Gaming Agency, and so forth.
4. The arbitration, unless another date is stipulated to by the parties, shall occur no later than fourteen (14) days from the date an arbitrator is named.

5. The decision of the arbitrator shall be final and unappealable.
6. Nothing in this Section shall be construed to waive, limit or restrict any remedy which is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact. Nor shall this Section be construed to preclude, limit or restrict the ability of the parties to pursue, by mutual agreement, alternative methods of dispute resolution, including but not limited to mediation or utilization of a technical advisor to the Tribe and the State Gaming Agency; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

### **VIII - REGULATORY FEES**

The State Gaming Agency does not intend to regulate the Tribe, as the parties have agreed the Tribe shall not conduct any type of Class III gaming activities. Moreover, the state regulatory fees identified in Appendix X hereto shall be paid by any other Tribe or Tribes which receive the Makah Indian Tribe's allocation of Tribal Lottery System machines.

However, in the event that regulation by the State Gaming Agency becomes necessary, the Tribe shall reimburse the State for all reasonable costs and expenses actually incurred. Reimbursement shall be made for monitoring, investigative, and/or processing costs. Should such services become necessary, the State shall submit a verified, detailed statement with supporting documentation of the services rendered. The Tribe shall reimburse the State Gaming Agency within forty-five (45) days after the receipt of the statement of expenses. In the event that a dispute arises, it will be resolved pursuant to section VII's final and unappealable arbitration process.

### **IX - AMENDMENTS, DURATION AND EFFECTIVE DATE**

- A. Effective Date. This Compact shall constitute the agreement between the State and the Tribe pursuant to IGRA and shall be amended and modified only under provisions of the Compact. This Compact shall take effect upon publication of notice of approval by the U.S. Secretary of the Interior in the Federal Register in accordance with 25 U.S.C. § 2710(d)(3)(B).
- B. Voluntary Termination. Once effective, this Compact shall be in effect until terminated by the written agreement of both parties. Provided, should the Tribe wish to end its right to receive Tribal Lottery System machine allocations, the Tribe may unilaterally terminate this Compact by submitting written notice sixty (60) days prior to the date of termination to the Governor of the State of Washington. Provided, State jurisdiction under this Compact shall continue until the completion of any pending investigation or court action. Suspension of or injunction against the Tribe's allocation of Tribal Lottery System machines shall not constitute termination for the purpose of this sub-section.



- C. Other Termination - Change of State Law. If the laws of the State authorizing Tribal Lottery System machine gaming activities are repealed, prohibiting such gaming for any purpose by any person, organization or entity, it is the State's position that the provisions of the Compact providing for the Tribe's interest in such gaming would not be authorized, and the Tribe's continued benefit from such gaming would constitute a violation of the Compact and the State may bring an action in Federal District Court pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii).

The Tribe disagrees that such subsequent State legislation would have this effect under IGRA and the Compact, but does agree that such an action, if commenced in that forum, is the appropriate State recourse and for such purpose the Tribe consents to such a suit and hereby grants a limited waiver of sovereign immunity solely for the purpose of litigating the said issue.

## **X - RENEGOTIATIONS**

The purpose of this Compact is to create a means through which the Tribe may receive its Allocation, and to define the manner of laws regulating said Allocation. The Tribe may request renegotiations for gaming on its Tribal lands at any time, including renegotiations to request a transferable allocation of table games. Additionally, either party may request renegotiations of the other terms of this Compact at any time. All renegotiation requests shall be made in writing to the other party. The parties shall confer, and required negotiations shall commence within thirty (30) days of the request.

## **XI - LIMITATION OF LIABILITY**

Neither the Tribe nor the State are creating, or intend to create, any rights in third parties which would result in any claims of any nature whatsoever against the Tribe or the State as a result of this Compact. Neither the Tribe nor the State has waived immunity from third party suits or claims of any kind or nature whatsoever against them, and nothing contained in this Compact shall be construed to effect a waiver, in whole or in part, of said immunity.

## **XII - NOTICES**

Unless otherwise indicated by this Compact, all notices required or authorized to be served shall be served by certified mail or be delivered by other expedited services which require a signature for receipt at the following addresses:

Governor  
State of Washington  
State Capitol

Tribal Chair  
Makah Indian Tribe  
191 Resort Drive  
Post Office Box 115  
Neah Bay, Washington 98357

With a copy to:

Rich Berley  
Ziontz, Chestnut Law Firm  
2101 4<sup>th</sup> Avenue, Suite 1230  
Seattle, Washington 98121


Director  
Washington State Gambling Commission  
Post Office Box 42400  
Olympia, Washington 98504-2400

### XIII - SEVERABILITY

In the event that any Section or provision of this Compact is held invalid, or its application to any particular activity held invalid, it is the intent of the parties that the remaining Sections of the Compact, and the remaining applications of such Section or provision shall continue in full force and effect.

**IN WITNESS WHEREOF, the Makah Indian Tribe and the State of Washington have executed this compact.**

MAKAH INDIAN TRIBE

By:  DATED: 5-30-2000  
Bender Johnson, Jr., Tribal Chairman

THE STATE OF WASHINGTON

By:  DATED: 5-17-2000  
Gary Locke, Governor